

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

AUDRA SMITH RANKIN
TX-1333499-L

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DOCKETED COMPLAINT NO.
08-049

FINAL ORDER

On this 20th day of February, 2009, the Board considered the above-noted matter.


After proper notice was given, the above case was heard by an Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH). The ALJ made and filed a proposal for decision containing findings of fact and conclusions of law. The proposal for decision was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record. No such exceptions or replies were filed.

The Texas Appraiser Licensing and Certification Board, after review and due consideration of the proposal for decision, attached as Exhibit A hereto, adopts the findings of fact and conclusions of law of the ALJ contained in the proposal for decision and incorporates those findings of fact and conclusions of law into this Final Order as if such were fully set out and separately stated in this Final Order. All proposed findings of fact and conclusions of law submitted by any party that are not specifically adopted in this Final Order are denied.

NOW, THEREFORE, IT IS ORDERED by the Texas Appraiser Licensing and Certification Board that the Respondent pay to the Board an administrative penalty of \$1,000.00. Payment of the ADMINISTRATIVE PENALTY must be by certified funds, and must be tendered within TWENTY DAYS of the date Audra Smith Rankin is notified of this Final Order.

If enforcement of this Final Order is restrained or enjoined by an order of a court, this order shall become effective upon a final determination by said court or appellate court in favor of the Texas Appraiser Licensing and Certification Board.

Approved by the Board and Signed this 20th day of February, 2009.


Clinton P. Sayers, Chairperson
Texas Appraiser Licensing and Certification Board

TEXAS APPRAISER LICENSING AND
CERTIFICATION BOARD,
Petitioner

V.

AUDRA SMITH RANKIN,
TX-1333499-L,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Appraiser Licensing and Certification Board (Staff/Board) brought this action seeking to impose an administrative penalty against Audra Smith Rankin (Respondent), who holds an inactive real property appraiser certification. The Board alleges that the Respondent violated the Texas Appraiser Licensing and Certification Act (Act) and the Board's rules by producing appraisal reports that violated the standards in the Uniform Standards of Professional Appraisal Practice (USPAP). The Administrative Law Judge (ALJ) recommends that the Board assess an administrative penalty of one-thousand dollars (\$1,000.00) against Respondent.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing convened November 25, 2008, before Administrative Law Judge (ALJ) Thomas H. Walston at the William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Staff was represented by its attorney Troy Beaulieu. Respondent did not appear and was not represented at the hearing. The record closed on the same day.

After establishing that appropriate notice of the hearing was provided to Respondent and that the Commission has jurisdiction, Staff moved for a default.¹ The default was granted in accordance

¹ Staff stated that the notice of hearing sent to Respondent was returned to the Board marked "undeliverable," so it appears that Respondent did not actually receive the notice. However, this does not preclude a default judgment. In *Texas Real Estate Comm'n v. Howard*, 538 S.W.2d 429 (Tex. Civ. App.-Houston [1st Dist.] 1976, writ ref'd n.r.e.), the court held that under a statute authorizing notice by certified mail, proper service was effected when the notice of hearing was properly stamped, addressed, registered and mailed to the broker at her last known address, even though the letter was returned to the Real Estate Commission with the notation: "Unclaimed." Pursuant to TEX. OCC. CODE § 1103.403

with 1 TEX. ADMIN. CODE § 155.501, and the allegations were accepted as true.

II. FINDINGS OF FACT

1. Audra Smith Rankin (Respondent) held a State Certified General Real Property Appraiser license number TX-1333499-L issued by the Texas Appraiser Licensing and Certification Board (Board), from March 18, 2007, through March 31, 2008.
2. Respondent's last known address of record on file with the Board is 529 Oak Hills Drive, Newark, Texas 76071.
3. On September 6, 2007, the Respondent was notified by the U.S. Department of Housing and Urban Department (HUD) of the agency's intention to remove her from the FHA Appraiser Roster.
4. On November 13, 2007, the Board was notified by HUD of Respondent's sanctions and removal from the FHA Appraiser Roster.
5. Respondent failed to properly identify and analyze all prior sales for three years of the property located at 316 Chase Hill Ln., Fort Worth, Texas, which may facilitate "land flip" deals, in compliance with SMT-10, E.6., and HUD regulations that require compliance to Uniform Standards of Professional Appraisal Practice (USPAP).
6. Respondent failed to provide an analysis of the Listing and Agreement of Sale for the following properties in accordance with HUD and USPAP definition of Market Value, and/or failed to provide a three-year sales history of the properties as required by USPAP:
 - 499 Private Road 1616, Stephenville, Texas;
 - 306 Elm Dr., Terrell, Texas;
 - 2423 Emmett St., Dallas, Texas;
 - 1521 Milmo Dr., Fort Worth, Texas; and
 - 3217 Bunker Hill Dr., Forest Hill, Texas.
7. Respondent failed to provide complete and accurate data regarding the overall description of the following properties' neighborhoods in accordance with HUD and USPAP requirements:
 - 499 Private Road 1616, Stephenville, Texas; and
 - 316 Chase Hill Ln., Fort Worth, Texas.

and 22 TEX. ADMIN. CODE § 157.9(b), Respondent was required to notify the Board of any change of address, and service of the notice of hearing upon Respondent was complete and effective upon proper mailing of the notice to Respondent's most recent address as shown by the records of the Board.

8. Respondent failed to provide a complete and accurate description of the following properties' sites in accordance with HUD and USPAP requirements:
 - 499 Private Road 1616, Stephenville, Texas;
 - 306 Elm Dr., Terrell, Texas;
 - 2423 Emmett St., Dallas, Texas;
 - 1521 Milmo Dr., Fort Worth, Texas; and
 - 3217 Bunker Hill Dr., Forest Hill, Texas.
9. Respondent failed to properly verify comparable sales data as required by HUD for all of the following cases:
 - 499 Private Road 1616, Stephenville, Texas;
 - 306 Elm Dr., Terrell, Texas;
 - 2423 Emmett St., Dallas, Texas;
 - 1521 Milmo Dr., Fort Worth, Texas; and
 - 3217 Bunker Hill Dr., Forest Hill, Texas.
10. Respondent failed to provide a complete and accurate overall description of the following properties' improvements in accordance with HUD and USPAP requirements:
 - 499 Private Road 1616, Stephenville, Texas;
 - 306 Elm Dr., Terrell, Texas; and
 - 2423 Emmett St., Dallas, Texas.
11. Respondent failed to provide accurate, specific data for the comparable properties required for accurate comparison and value determination of the following properties as required by HUD:
 - 499 Private Road 1616, Stephenville, Texas;
 - 306 Elm Dr., Terrell, Texas;
 - 2423 Emmett St., Dallas, Texas (2);
 - 1521 Milmo Dr., Fort Worth, Texas; and
 - 3217 Bunker Hill Dr., Forest Hill, Texas.
12. Respondent failed to use the best available comparable properties as required by HUD resulting in overvaluation of the property located at 1521 Milmo Dr., Fort Worth, Texas.
13. Respondent failed to identify required repairs for the following properties and to accurately report them on the Uniform Residential Appraisal Report:
 - 499 Private Road 1616, Stephenville, Texas; and
 - 2423 Emmett St., Dallas, Texas.

14. Respondent failed to analyze and properly adjust for sales concessions on the comparable properties per HUD and USPAP requirements, resulting in an overvaluation of the following properties:
 - 499 Private Road 1616, Stephenville, Texas;
 - 2423 Emmett St., Dallas, Texas;
 - 1521 Milmo Dr., Fort Worth, Texas; and
 - 3217 Bunker Hill Dr., Forest Hill, Texas.
15. On October 21, 2008, staff of the Board (Staff) sent its Original Statement of Charges and Request to Docket Case to Respondent at her last known address reflected in Board records.
16. On October 23, 2008, Staff sent its Notice of Hearing to Respondent by certified mail at her last known address reflected in Board records.
17. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the matters asserted.
18. The Notice of Hearing stated, in at least 12-point, bold-faced font, that "failure to appear at the hearing will result in the original statement of charges being admitted as true, the relief sought by [the Board] granted, and a default judgment being taken against you."
19. The hearing on the merits was convened on November 25, 2008, at 11:30 a.m. at the State Office of Administrative Hearings, William P. Clements Office Building, 300 West 15th Street, Austin, Texas.
20. Staff appeared at the hearing through attorney Troy Beaulieu. Neither Respondent nor counsel for Respondent appeared at the hearing or filed a motion for continuance of the hearing.
21. Respondent failed to appear and failed to answer the allegations Petitioner asserts in the Original Statement of Charges, nor has she filed any responsive pleading whatsoever.
22. Staff made a motion for default, which was granted following the admission of evidence establishing proper jurisdiction and notice.

III. CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board (Board) has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. (Code) ch. 1103.

2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. chs. 2001 and 2003.
3. Pursuant to TEX. OCC. CODE § 1103.403, Respondent was required to notify the Board of any change of her office address.
4. Pursuant to 22 TEX. ADMIN. CODE § 157.9(b), service of the notice of hearing upon Respondent was complete and effective upon proper mailing of the notice to Respondent's most recent address as shown by the records of the Board.
5. Staff provided proper notice of the hearing to Respondent. TEX. GOV'T CODE ANN. chs. 2001 and 2003.
6. Staff had the burden of proof on its allegations. 1 TEX. ADMIN. CODE (TAC) § 155.427.
7. The Board's rules require that appraisals must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) developed and published by the Appraisal Foundation and in effect at the time. 22 TAC § 155.1(a).
8. Based on the above Findings of Fact, Respondent committed multiple willful violations of USPAP with respect to her appraisal and corresponding report for the properties located at:
 - 499 Private Road 1616, Stephenville, Texas;
 - 306 Elm Dr., Terrell, Texas;
 - 2423 Emmett St., Dallas, Texas;
 - 1521 Milmo Dr., Fort Worth, Texas; and
 - 3217 Bunker Hill Dr., Forest Hill, Texas.
9. The Board is authorized to impose and administrative penalty against Respondent for violation of the Board's rules or the USPAP standards. Code §§ 1103.518(2)(H) and 1103.552.
10. Based on the above Findings of Fact and Conclusions of Law, the Board should assess an administrative penalty of \$1,000.00 against Respondent. 22 TAC § 153.24(h).

SIGNED January 7, 2009.



THOMAS H. WALSTON

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS